

Appl. No.: 10/720,710
Amdt. dated 10/03/2006
Reply to Office Action of August 28, 2006

REMARKS/ARGUMENTS

Claims 1-8 and 11-25 are pending. Claims 9 and 10 have been canceled without prejudice. Claims 1-25 were rejected as unpatentable over U.S. Patent No. 4,557,398 to Hambleton et al. in view of WO 99/07786 to Powell.

As an initial matter, Applicant notes that the Powell reference was first brought to the Examiner's attention in an Information Disclosure Statement filed on May 25, 2005, nearly six months before the first Office Action in this application. As such, the Information Disclosure Statement was filed not under 37 CFR 1.97(c), but rather under 37 CFR 1.97(b). Furthermore, up until now Applicant has not amended the claims. For these reasons, Applicant respectfully submits that the new ground of rejection presented in the final Office Action was not "necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c)" (MPEP 706.07(a)).

Applicant has not been given an opportunity to specifically address (through claim amendments presented herein) the ground of rejection presented for the first time in the final Office Action of August 28, 2006. Accordingly, it is respectfully submitted that the Office Action should not have been made final, and Applicant respectfully requests that the finality of the Office Action be withdrawn.

As an alternative, if the final status is maintained, Applicant requests that at least the present amendments be entered and considered. In this regard, it is submitted that the search already conducted by the Examiner should have discovered all of the art pertinent to the blending of two different ionomers of different acid contents to form a heat seal material in a container closure system. Thus, no new search should be required. Furthermore, it is submitted (for the reasons set forth below) that the claim amendments clearly place the application in condition for allowance.

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Turning to the rejections at issue, Hambleton discloses a container wherein the closure is sealed to the container with a Surlyn/lacquer layer **58** (col. 7, lines 54-68, col. 8, lines 1-4, and FIG. 3) on the closure. The Office Action acknowledges that Hambleton fails to disclose “the lower acid content material”, but Powell is cited as allegedly disclosing a heat seal material as claimed, and it is asserted that a person of ordinary skill in the art would have modified Hambleton to use Powell’s heat seal material in order to improve adherence qualities of the sealing material.

Powell discloses a heat seal material comprising high-density polyethylene blended with an acid copolymer or an ionomer or blend thereof. The presence of the high-density polyethylene is essential to achieving the purported advantage that Powell states, namely, reduced blocking tendency of the structure having the seal material. As such, it would not have been obvious to omit the HDPE from Powell’s seal material.

Applicant has amended the pending independent claims to recite that the heat seal material *consists essentially of* a blend of first and second acidic ionomers having respectively higher and lower acid content such that the heat-seal material has an acid content intermediate between that of the first and second ionomers. The amended claims thus effectively exclude the HDPE that Powell indicates is necessary in his seal material.

Accordingly, it is submitted that the cited references, even if combined, would not have suggested the claimed invention, and that the amended claims are clearly patentable over the cited references.

Conclusion

Based on the above remarks, it is respectfully submitted that the application is in condition for allowance.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of

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this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefor (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

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